UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,744	05/11/2001	Joseph Frank Schober	06975-089001	4987

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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

EXAMINER
BARQADLE, YASIN M

ART UNIT	PAPER NUMBER
2153	

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 September 2005</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-15,17-42,44-69 and 71-87</u> is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-15,17-42,44-69 and 71-87</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

  1.☐ Certified copies of the priority documents have been received.

  2.☐ Certified copies of the priority documents have been received in Application No. _____.

  3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/29.05</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 19, 2005 has been entered.

Response to Amendment

2.   The amendment filed on September 19, 2005 has been fully considered but are moot in view of the new grounds of rejection.

- Claims 1-15, 17-42, 44-69 and 71-87 are presented for examination.

- Claims 16,43 and 70 remain cancelled.

- New claims 82-87 have been added.

Claim Rejections - 35 USC § 112

3.   Claims 2, 29 and 56 are rejected under 35 U.S.C. 112, first

paragraph, as failing to comply with the written description

requirement. The claim(s) contains subject matter which was not

described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s),

at the time the application was filed, had possession of the

claimed invention. <u>Dividing</u> the predetermined amount of data by

the amount of time taken for the data to be received by the

recipient. Examiner could not find a support in the

specification for this limitation. Examiner could not find the

word divide in the whole specification as originally filed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

> (a) A patent may not be obtained though the invention is not identically
> disclosed or described as set forth in section 102 of this title, if the
> differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at
> the time the invention was made to a person having ordinary skill in the
> art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

4.   Claims 1-15,17-20, 22-42, 44-47, 49-69, 71-74 and 76-81 are

rejected under 35 U.S.C. 103(a) as being unpatentable over

Aharoni et al USPN (6014694) in view of Burman et al USPN

(20010010059) hereinafter "Burman".

As per claim 1, Aharoni et al teach a method of communicating

content (fig. 1 and abstract), the method comprising:

automatically determining an available bandwidth (the

network bandwidth is determined dynamically (col. 1, lines 58-

61)) between a recipient and a provider (between the video

server and the client (fig. 1) [col.2, lines 54-65 and col.3,

lines 29-46];

selecting among content of varying formats to be

communicated between the recipient and the provider based on the

available bandwidth determined [video frames are selected to be

communicated over the network channel in accordance with

available bandwidth [col. 3, lines 9-28 and col. 4 lines 35-58];

and

communicating the content selected between the provider and

the recipient [video data is transported to a video client col.

8, lines 2-7 and col. 3, lines 29-61].

Although Aharoni et al show substantial features of the claimed

invention video including selecting video frames to be

communicated over the network channel in accordance with

available bandwidth, he does not explicitly show content having

distinct media types.

Nonetheless, this feature is well known in the art and would

have been an obvious modification of the system disclosed by

Aharoni et al, as evidenced by Burman USPN. (20010010059).

In analogous art, Burman whose invention is about a method for

determining transfer time and/or bandwidth between a device and

server, disclose an ad server selecting and serving an

appropriate content to a user based on the user's bandwidth. For

example, if the user's bandwidth is too slow, the ad selection

server, upon receipt of a request by the user's browser, may

send content having a small size, a black and white image for

example, to the user's browser. Thus, high-bandwidth users will

get sophisticated rich media content, while lower-bandwidth

users will get quicker content downloads from servers. The

content selected can be and delivered to a user can be, for

example, a black and white image for a low-bandwidth user (e.g.,

a user connected to a computer network via a 14.4 Kbps modem), a

color version of the same image for an average bandwidth user

(e.g., a user connected to the computer network via a 28.8 Kbps

modem), or an animated or video version for a high-bandwidth

user (e.g., a user connected to the computer network via an ISDN
or T1 connection) (¶ 0036 and ¶ 0132).
Giving the teaching of Burman, a person of ordinary skill in the
art would have readily recognized the desirability and the
advantage of modifying Aharoni et al by employing the system of
Burman, in this way web browsing satisfaction can be increased
for the users while advertising over the computer network can be
dynamically modified or created, thereby improving the
effectiveness of advertising.

As per claim 2, Aharoni et al teach the method of claim 1
wherein the available bandwidth is determined automatically
using at least one iteration comprising:

   transmitting a predetermined amount of data to the
recipient [data packets are transmitted col. 3, lines 47 to col.
4, line 34];

   monitoring an amount of time taken for the predetermined
amount of data to be received by the recipient [col. 3, lines 47
to col. 4, line 34 and col. 12, lines 49-65]; and

   calculating the available bandwidth by dividing the
predetermined amount of data by the amount of time taken for the
data to be received by the recipient [measuring available

bandwidth based on transmitted packet results col. 3, lines 47

to col. 4, line 34 and col. 12, lines 49-65].

As per claim 3, Aharoni et al teach the method of claim 2

wherein transmitting the data comprises transmitting an amount

of data determined based on a prediction of a communication

device used by the recipient to communicate [col. 7, lines 7-35

and col. 12, lines 27-41].

As per claim 4, Aharoni et al teach the method of claim 2

wherein automatically determining the available bandwidth

further comprises:

    transmitting information indicating the amount of data

being communicated to the recipient [col. 3, lines 47 to col.

4, line 34 and col. 12, lines 49-65], wherein calculating the

available bandwidth comprises calculating the available

bandwidth at the recipient based on the information indicating

the amount of data communicated and the amount of time for the

transmission [col. 3, lines 47 to col. 4, line 34 and col. 12,

lines 49-65].

As per claim 5, Aharoni et al teach the method of claim 2

wherein calculating the available bandwidth comprises

calculating the available bandwidth at the provider based on the

amount of data and the amount of time for the transmission [col.

3, lines 47 to col. 4, line 34 and col. 12, lines 49-65].

As per claim 6, Aharoni et al teach the method of claim 1

wherein automatically determining the available bandwidth

comprises:

transmitting a predetermined amount of data to the

recipient [col. 3, lines 47 to col. 4, line 34],

re-transmitting the predetermined amount of data to the

provider [col. 3, lines 47 to col. 4, line 34];

monitoring an amount of time taken for the predetermined

amount of data to be received by the recipient, re-transmitted

to the provider, and received by the provider [col. 3, lines 47

to col. 4, line 34 and col. 12, lines 56-66]; and

calculating the available bandwidth based on the

predetermined amount of data and the amount of time taken for

the data to be received by the recipient, re-transmitted to the

provider, and received by the provider [col. 3, lines 47 to col.

4, line 34 and col. 13, lines 12-49].

As per claim 7, Aharoni et al teach the method of claim 6 wherein automatically determining the available bandwidth further comprises:

transmitting information indicating the amount of data being communicated to the recipient [col. 3, lines 47 to col. 4, line 34],

wherein calculating the available bandwidth comprises calculating the available bandwidth at the recipient based on the information indicating the amount of data communicated and the amount of time taken for the data to be received by the recipient, re-transmitted to the provider, and received by the provider [col. 3, lines 47 to col. 4, line 34].

As per claim 8, Aharoni et al teach the method of claim 6 wherein calculating the available bandwidth comprises calculating the available bandwidth at the provider based on the amount of data and the amount of time taken for the data to be received by the recipient, re-transmitted to the provider, and received by the provider [col. 3, lines 47 to col. 4, line 58].

As per claim 9, Aharoni et al teach the method of claim 2 wherein automatically determining the available bandwidth further comprises:

adjusting the predetermined amount of data based on the

available bandwidth calculated [col. 11, lines 27-44]; and

repeating the iteration using the adjusted predetermined

amount of data [col. 11, lines 27-44].

As per claim 10, Aharoni et al teach the method of claim 9

wherein adjusting the predetermined amount of data comprises

increasing the predetermined amount of data [col. 11, lines 27-

44 and col. 3, lines 47 to col. 4, line 34].

As per claim 11, Aharoni et al teach the method of claim 9

wherein adjusting the predetermined amount of data comprises

decreasing the predetermined amount of data [col. 3, lines 47 to

col. 4, line 34].

As per claim 12, Aharoni et al teach the method of claim 1

wherein automatically determining the available bandwidth

comprises automatically detecting the available bandwidth

between the recipient and the provider [col. 13, lines 12-66 and

col. 14, lines 46-62].

As per claim 13, Aharoni et al teach the method of claim 1

wherein automatically determining the available bandwidth is

performed when the recipient initially establishes
communications with the provider [col. 15, lines 8-65].

As per claim 14, Aharoni et al teach the method of claim 1
wherein automatically determining the available bandwidth is
performed when the recipient requests content from the provider
after the recipient initially establishes communications with
the provider [col. 15, lines 8 to col. 16, lines 23].

As per claim 15, Aharoni et al teach the method of claim 1
wherein selecting content comprises selecting among content of
varying richnesses based on the available bandwidth determined
[col. 3, lines 9-28 and col. 4 lines 35-58].

As per claim 17, Burman et al teach the method of claim 1
wherein selecting among content of varying formats comprises
selecting between at least content in a still picture format and
content in a video format depending upon the available bandwidth
determined (¶ 0036 and ¶ 0132).

As per claim 18, Aharoni et al teach the method of claim 1
wherein the recipient is a client and the provider is a host
[col. 7, lines 7-35].

As per claim 19, Aharoni et al teach the method of claim 1

wherein the recipient is a host and the provider is a client

[col. 7, lines 7-11 and 44-57].

As per claim 20, Aharoni et al teach the method of claim 1

wherein the recipient and the provider are both client devices

[col. 7, lines 7-11 and 44-57].

As per claim 22, Aharoni et al teach the method of claim 1

wherein automatically determining an available bandwidth

includes automatically detecting the available bandwidth several

times during one communication session between the recipient and

the provider [col. 13, lines 12-66 and col. 14, lines 46-62].

As per claim 23, Aharoni et al teach the method of claim 1

wherein automatically determining an available bandwidth

includes automatically determining the available bandwidth over

a channel accommodating communications from the recipient to the

provider and separately automatically determining the available

bandwidth over a channel accommodating communications from the

provider to the recipient [col. 3, lines 47 to col. 4, line 34

and col. 14, lines 46-62].

As per claim 24, Aharoni et al teach the method of claim 1
wherein automatically determining an available bandwidth
includes automatically determining the available bandwidth over
multiple channels between the recipient and the provider [col.
3, lines 47 to col. 4, line 34].

As per claim 25, Aharoni et al teach the method of claim 24
wherein automatically determining the available bandwidth over
multiple channels includes automatically determining the
available bandwidth simultaneously over multiple channels
between the recipient and the provider [col. 3, lines 47 to col.
4, line 34 and col. 19, lines 23-42].

As per claim 26 Aharoni et al teach the method of claim 24
further comprising selecting differing content to be
communicated over the multiple channels between the recipient
and the provider based on the available bandwidth determined
over the multiple channels [col. 3, lines 47 to col. 4, line 34
and col. 19, lines 23-42].
As per claim 27, Aharoni et al teach the method of claim 1
wherein automatically determining an available bandwidth
includes automatically determining the available bandwidth
simultaneously from the provider to the recipient and from the

recipient to the provider [col. 3, lines 47 to col. 4, line 58 and col. 19, lines 23-42].

As per claim 28 and 55, these are a system and a computer program claims with similar limitations as explained in claim 1 above. Therefore, they are rejected with the same rationale. See the computer program with computer code segments as implemented in figs 11-12 and fig. 15].

As per claims 29-38 and 56-63, these claims correspond to rejected claims 2-11 above. Therefore, they are rejected with the same rationale. See claims 2-11 above.

As per claim 39 and 66, Aharoni et al teach the invention wherein the automatic determining code segment comprises an automatic detecting code segment that causes the computer to automatically detect the available bandwidth between the recipient and the provider [col. 13, lines 12-66 and col. 14, lines 46-62].

As per claim 40 and 67, Aharoni et al teach the invention wherein the automatic determining code segment causes the computer to determine automatically the available bandwidth when the recipient initially establishes communications with the provider [col. 15, lines 8-65].

As per claim 41 and 68, Aharoni et al teach the invention
wherein the automatic determining code segment causes the
computer to determine automatically the available bandwidth when
the recipient requests content from the provider after the
recipient initially establishes communications with the provider
[col. 15, lines 8 to col. 16, lines 23].

As per claim 42 and 69, Aharoni et al teach the invention
wherein the selecting code segment causes the computer to select
among content of varying richnesses based on the available
bandwidth determined [col. 3, lines 9-28 and col. 4 lines 35-
58].

As per claim 44 and 71, Aharoni et al teach the invention
wherein the selecting code segment causes the computer to select
between at least content in a still picture format and content
in a video format depending upon the available bandwidth
determined [col. 3, lines 9-28; col. 4 lines 35-58 and col. 8,
lines 44 to col. 9, line 35].

As per claim 45 and 72, Aharoni et al teach the invention
wherein the recipient is a client and the provider is a host
[col. 7, lines 7-35].

As per claim 46 and 73, Aharoni et al teach the invention
wherein the recipient is a host and the provider is a client
[fig. 1-2, col. 7, lines 7-11 and 44-57].

As per claim 47 and 74, Aharoni et al teach the invention
wherein the recipient and the provider are both client devices
[col. 7, lines 7-11 and 44-57].

As per claim 49 and 76, Aharoni et al teach the invention
wherein the automatic determining code segment causes the
computer to detect automatically the available bandwidth several
times during one communication session between the recipient and
the provider [col. 13, lines 12-66 and col. 14, lines 46-62].

As per claim 50 and 77, Aharoni et al teach the invention
wherein the automatic determining code segment causes the
computer to determine automatically the available bandwidth over
a channel accommodating communications from the recipient to the
provider and separately to determine automatically the available

bandwidth over a channel accommodating communications from the provider to the recipient [col. 3, lines 47 to col. 4, line 34 and col. 14, lines 46-62].

As per claim 51 and 78, Aharoni et al teach the invention wherein the automatic determining code segment causes the computer to determine automatically the available bandwidth over multiple channels between the recipient and the provider [col. 3, lines 47 to col. 4, line 34].

As per claim 52 and 79, Aharoni et al teach the invention wherein the automatic determining code segment causes the computer to determine automatically the available bandwidth simultaneously over multiple channels between the recipient and the provider [col. 3, lines 47 to col. 4, line 34 and col. 19, lines 23-42].

As per claim 53 and 80, Aharoni et al teach the invention wherein the selecting code segment causes the computer to select differing content to be communicated over the multiple channels between the recipient and the provider based on the available bandwidth determined over the multiple channels [col. 3, lines 47 to col. 4, line 58 and col. 19, lines 23-42].

As per claim 54 and 81, Aharoni et al teach the invention
wherein automatically determining an available bandwidth
includes automatically determining the available bandwidth
simultaneously from the provider to the recipient and from the
recipient to the provider [col. 3, lines 47 to col. 4, line 58
and col. 19, lines 23-42].

As per claims 82-84 Burman teaches determining intervals for
updating the selected content based on the available bandwidth
determined (¶0079 and ¶0110-0111); and updating the content
selected between the provider and the recipient at the
determined intervals (¶ 0079 and ¶0110-0111).

5.   Claims 21, 48 and 75 are rejected under 35 U.S.C. 103(a) as
being unpatentable over Aharoni et al USPN (6014694) in view of
Gupta et al USPN (6622171).

As per claims 21, 48 and 75, although Aharoni et al shows
substantial features of the claimed invention as explained in
claims 1, 28 and 55, he does not explicitly show a recipient and
a provider that are both capable of peer-to-peer communications.
Nonetheless, this feature is well known in the art and would
have been an obvious modification of the system disclosed by
Aharoni et al, as evidenced by Gupta et al USPN. (6622171).

In analogous art, Gupta et al whose invention is about a
client/server system for determining the available bandwidth
between the client and the server (col. 11, lines 48-53),
disclose a recipient and a provider (client and server) that are
both capable of peer-to-peer communications [col. 5, lines 24-
31]. Giving the teaching of Gupta et al, a person of ordinary
skill in the art would have readily recognized the desirability
and the advantage of modifying Aharoni et al by employing the
system of Gupta et al for the advantage of efficiently
transferring digital files from a sending node to a receiving
node over a network.

As per claims 85-87, Burman teaches a system for updating
dynamic content (fig. 1), the system comprising:

automatically determining an available bandwidth between a
recipient and a provider (fig. 1 and abstract); selecting
content to be communicated between the recipient and the
provider (0036 and ¶ 0132); communicating the content selected
between the provider and the recipient ad server selecting and
serving an appropriate content to a user based on the user's
bandwidth. For example, if the user's bandwidth is too slow, the
ad selection server, upon receipt of a request by the user's
browser, may send content having a small size, a black and white

image for example, to the user's browser. Thus, high-bandwidth

users will get sophisticated rich media content, while lower-

bandwidth users will get quicker content downloads from servers.

The content selected can be and delivered to a user can be, for

example, a black and white image for a low-bandwidth user (e.g.,

a user connected to a computer network via a 14.4 Kbps modem), a

color version of the same image for an average bandwidth user

(e.g., a user connected to the computer network via a 28.8 Kbps

modem), or an animated or video version for a high-bandwidth

user (e.g., a user connected to the computer network via an ISDN

or T1 connection)(¶ 0036 and ¶ 0132); determining intervals for

updating the selected content based on the available bandwidth

determined (¶0079 and ¶0110-0111); and updating the content

selected between the provider and the recipient at the

determined intervals (¶ 0079 and ¶0110-0111).

Conclusion

The prior made of record and not relied upon is considered

pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier

communications from the examiner should be directed to Yasin

Barqadle whose telephone number is 571-272-3947. The examiner

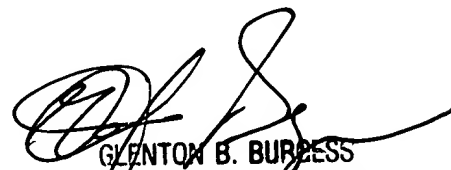can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are

unsuccessful, the examiner's supervisor, Glenn Burgess can be

reached on 571-272-3949. The fax phone numbers for the

organization where this application or proceeding is assigned

are 703-872-9306 for regular communications and 703-746-7238 for

After Final communications.

Any inquiry of a general nature or relating to the status

of this application or proceeding should be directed to the

receptionist whose telephone number is 703-305-3900.

Information regarding the status of an application may be

obtained form the Patent Application Information Retrieval

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be obtained from either private PAIR or public PAIR system.

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questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YB

Art Unit 2153

GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100